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**TITLE 327 WATER POLLUTION CONTROL BOARD**

**Proposed Rule**  
LSA Document #08-324

**DIGEST**

Amends [327 IAC 2-1-3.1](#) concerning CSO wet weather limited use designation. Adds [327 IAC 2-1-11.5](#) concerning CSO wet weather limited use subcategory. Effective 30 days after filing with the Publisher.

**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed a proposed rule under [IC 13-14-9-14\(c\)](#) to amend [327 IAC 2-1-3.1](#) and add [327 IAC 2-1-11.5](#) concerning the establishment of a combined sewer overflow (CSO) wet weather limited use subcategory for the area defined by the city of Indianapolis's use attainability analysis. By this notice, IDEM is soliciting public comment on the proposed rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [327 IAC 2-1-3.1](#); [327 IAC 2-1-11.5](#).

**AUTHORITY:** [IC 13-14-8-7](#); [IC 13-14-9-14](#); [IC 13-18-3-2](#); [IC 13-18-3-2.5](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**

**Basic Purpose and Background**

[IC 13-18-3-2.5](#) originated with Senate Enrolled Act (SEA) 620 (also known as Public Law 54-2005) that was passed in the 2005 legislative session to establish the CSO wet weather limited use subcategory of the recreational use designation for waters receiving combined sewer overflows. Accordingly, the Water Pollution Control Board (WPCB) adopted rules in 2007 to implement the establishment of the subcategory. The subcategory is available to CSO communities that perform a use attainability analysis to change the designated use of waters receiving CSOs and have implemented an approved long-term control plan. The long-term control plan must be approved by IDEM and be incorporated into the NPDES permit or an order of the commissioner under [IC 13-14-2-6](#). The long-term control plan must also specify the water quality-based requirements that apply to combined sewer overflows during and immediately following wet weather events.

[IC 13-14-9-14](#), added by Public Law 100-2006, SECTION 10, allows the WPCB to adopt a rule to establish new water quality standards for a community served by a combined sewer that has an approved long-term control plan and an approved use attainability analysis that supports the use of a CSO wet weather limited use subcategory established under [IC 13-18-3-2.5](#). The subcategory will apply to the city's CSO outfalls when the approved long-term control plan is implemented, in accordance with [IC 13-18-3-2.5](#).

**PUBLIC COMMENTS UNDER [IC 13-14-9-14\(d\)\(2\)](#)**

[IC 13-14-9-14\(d\)\(2\)](#) states that notice of rule language to amend a designated use to allow for a CSO wet weather limited use subcategory in accordance with [IC 13-18-3-2.5](#) shall include a written comment period of at least 30 days.

**REQUEST FOR PUBLIC COMMENTS**

This notice requests the submission of comments on the proposed rule language. Mailed comments should be addressed to:

#08-324 (Indianapolis CSO Wet Weather Limited Use Designation)  
MaryAnn Stevens  
Rules Section  
Office of Water Quality  
Indiana Department of Environmental Management  
Indianapolis, Indiana 46204-2251.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the twelfth floor reception desk, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana. Comments also may be submitted by facsimile to (317) 232-8406, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Office of Water Quality, Rules Section at (317) 233-8903. Please note it is not necessary to follow a faxed comment letter with another sent through the postal system.

**COMMENT PERIOD DEADLINE**

Comments must be postmarked, hand delivered, or faxed by June 6, 2008.

Additional information regarding this rulemaking action may be obtained from MaryAnn Stevens, Rules Section, Office of Water Quality, (317) 232-8635, or technical information concerning the CSO wet weather limited use subcategory of the recreational use designation for waters receiving combined sewer overflows may be obtained from Cyndi Wagner, Wet Weather Section, Office of Water Quality, (317) 233-0473 or (800) 451-6027 (in Indiana).

**[327 IAC 2-1-3.1](#); [327 IAC 2-1-11.5](#)**

SECTION 1. [327 IAC 2-1-3.1](#) IS AMENDED TO READ AS FOLLOWS:

**[327 IAC 2-1-3.1](#) CSO wet weather limited use designation**

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-18-3-2.5](#)

**Affected:** [IC 13-14-2-6](#); [IC 13-14-9-14](#); [IC 13-18-4](#)

Sec. 3.1. (a) The CSO wet weather limited use subcategory established under section 3 of this rule shall be applied only to waters receiving wet weather discharges from combined sewer overflows. **Waters receiving the CSO wet weather limited use subcategory designation are listed in section 11.5 of this rule.**

(b) To receive consideration for the CSO wet weather limited use subcategory designation, a CSO community must do the following:

- (1) Perform a use attainability analysis (UAA) to change the recreational designated use of the waterbody or waterbodies receiving the wet weather discharges from combined sewer overflows.
- (2) Submit the UAA to the department for approval.
- (3) Submit a long-term control plan (LTCP) consistent with the application of the CSO wet weather limited use subcategory to the department for approval.

(c) The LTCP submitted to the department must:

- (1) specify the water quality-based requirements that will apply to combined sewer overflows under subsection (h) if the waterbody or waterbodies receiving the wet weather overflows are redesignated to the CSO wet weather limited use subcategory; and
- (2) meet the requirements of Section 402(q) of the Clean Water Act.

(d) The department shall review the UAA concurrently with the LTCP if they are submitted concurrently. The department shall use the LTCP to satisfy the requirements of the UAA to the extent possible.

(e) Upon approval of a UAA, the department shall begin a rulemaking under [IC 13-14-9-14](#) to amend the designated use to a CSO wet weather limited use designation. The rulemaking may commence before full implementation of the approved LTCP.

(f) Upon completion of the rulemaking required under subsection (e), the department shall submit the amended recreational use designation and the supporting UAA to the U.S. EPA for approval.

(g) Upon U.S. EPA's approval of the use designation change for the waterbody or waterbodies receiving wet weather overflows from a CSO community, the department shall modify the NPDES permit holder's permit to incorporate the CSO wet weather limited use designation and the approved LTCP into the permit.

(h) The water quality-based requirements for the CSO wet weather limited use designation shall:

- (1) be determined by the approved LTCP for the combined sewer system;
- (2) be consistent with the Clean Water Act; and
- (3) remain in effect during the time and to the physical extent that the recreational use designation that applied to the waters immediately before the application to the waters of the CSO wet weather limited use subcategory is not attained but for not more than four (4) days after the date the overflow discharge ends.

(Water Pollution Control Board; [327 IAC 2-1-3.1](#); filed Sep 6, 2007, 12:25 p.m.: [20071003-IR-327050218FRA](#))

SECTION 2. [327 IAC 2-1-11.5](#) IS ADDED TO READ AS FOLLOWS:

**[327 IAC 2-1-11.5](#) CSO wet weather limited use subcategory; designated waters**

Authority: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-18-3](#)

Affected: [IC 13-18-4](#)

**Sec. 11.5. (a)** The following waters of the state are designated in the city of Indianapolis's approved long-term control plan for limited use pursuant to the CSO wet weather limited use subcategory established under section 3(c) of this rule:

- (1) White River from 56th Street to State Road 157 near Worthington.
- (2) Fall Creek from Keystone Avenue to the White River.
- (3) Little Eagle Creek from Michigan Street to the confluence with Big Eagle Creek, and Big Eagle Creek from the confluence with Little Eagle Creek to the White River.
- (4) Pogues Run from 21st Street to the White River.
- (5) Pleasant Run from Kitley Avenue to the White River.
- (6) Bean Creek from Interstate 65 to Pleasant Run.

**(b)** The water quality-based requirements for the CSO wet weather limited use subcategory:

(1) are determined by the approved LTCP for the combined sewer system; and

(2) shall remain in effect:

- (A) during the time and to the physical extent that the recreational use designation that applied to the waters immediately before the application of the subcategory is not attained; and
- (B) for not more than four (4) days after the date the CSO discharge ends.

(Water Pollution Control Board; [327 IAC 2-1-11.5](#))

[Notice of Public Hearing](#)

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